

BOARD OF APPEALS  
for  
MONTGOMERY COUNTY

Stella B. Werner Council Office Building  
100 Maryland Avenue  
Rockville, Maryland 20850  
(240) 777-6600

**Case No. S-2515**

**PETITION OF SPRINT PCS/APC REALTY AND EQUIPMENT COMPANY, LLC  
AND TERRY H., NERISSA B., FRANK H., AND ERIC Z. LLOYD**

OPINION OF THE BOARD

(Public Hearing Date: October 9, 2002)

(Effective Date of Opinion: November 21, 2002)

Case No. S-2515 is an application for a special exception pursuant to Section 59-G-2.43 (Public Utility Buildings, Public Utility Structures and Telecommunications Facilities) of the Zoning Ordinance to permit a telecommunications facility which includes a 150 foot monopole, nine panel antennas and six 10 x 20 foot equipment cabinets.

Pursuant to Section 59-A-4.11(a) of the Zoning Ordinance, the Board of Appeals convened a hearing on the application on September 25, 2002. The hearing was continued until October 9, 2002 to allow the Applicants additional time to communicate with the Town of Barnesville. At the hearing on October 9, 2002, James R. Michal, Esquire and Janet A. Brown, Esquire, appeared on behalf of the petitioner. Thomas P. Davis, John Belferman, Tina Brown, Michael Smith and Glen Percy appeared in opposition to the application. Martin Klauber, Peoples' Counsel appeared neither in support of nor in opposition to the application.

The subject property is, Parcel P907, located at 21410 Beallsville Road, Dickerson, Maryland, in the RDT Zone.

Decision of the Board:                      Special    Exception    **Granted**,    subject    to  
conditions.

**EVIDENCE PRESENTED**

1.     The Petitioners have applied for a special exception for the construction, operation and maintenance of a 150 foot monopole with 9 panel antennas and 6 equipment cabinets set on a 10 x 20 concrete pad. The equipment cabinets are

approximately 6 feet high by 3 feet wide by 3 feet deep. [Exhibit Nos. 6 (a) and (b)].

2. Sprint leases a 60 by 60 foot portion of the subject property for the special exception. The property owners, Terry H., Nerissa B., Frank H. and Eric Z. Lloyd are co-applicants for the special exception. [Exhibit Nos. 5, 6(a)].

3. The request is for installation of nine (9) panel antennas at the top of a 150' monopole in a triangular configuration consisting of three (3) sectors, facing in three directions, of three (3) antennas each. The antennas each measure approximately fifty-eight (58) inches long, seven (7) inches wide, and four (4) inches deep. The antennas are white in color and may be painted any color. Sprint states that the antennas do not generate any noise, dust, fumes, odors, lights glare, or vibrations, and that they do not interfere with radio, television or telephone reception. Sprint further states that the antenna emissions comply with all applicable emission requirements of the FCC and Environmental Protection Agency. [Exhibit Nos. 16, 18 and 20].

4. The coverage objective of the proposed facility is to serve Beallsville Road, Barnesville Road, the Barnesville train station and the surrounding areas. [Exhibit Nos. 15, 19].

5. Sprint states that the requested location and height for the monopole are necessary to achieve uninterrupted transmission of radio signals to provide telecommunications service to its customers within the area of the coverage objective. Sprint further states that the requested location and height were chosen based upon evaluation of other possible locations, and upon analysis of radio signal propagation studies. [Exhibit No. 5].

6. The subject property consists of 25.05 acres in the RDT zone, which requires a minimum net lot area of 40,000 square feet. The property owners and Sprint are co-applicants for the special exception. The proposed 150' monopole is set back as follows:

Front setback: 550 feet

Rear setback: 475 feet

Side setback: 502 feet

Side setback: 390 feet

[Exhibit Nos. 5, 6(a)].

7. Terry Lloyd testified that he contacted his immediate neighbors, Mr. Gravely and Mrs. Dougherty and the Poole family, and that they do not object to a monopole. [Id., p. 129-130]. Mr. Lloyd also testified that he posted the special

exception sign “right off the road, in the middle of the property” [Id. p. 154], that he was on the special exception property almost every day, and that he never noticed that the special exception sign was not legible [Id. p. 163].

8. The Telecommunications Transmission Facility Coordinating Group (Tower Committee) reviewed the application on July 3, 2002 and recommended approval of the proposed 150 foot monopole. [Exhibit No. 34]. The Tower Committee’s meeting was open to the public.

9. Maryland National Capital Park and Planning Commission (MNCPPC) technical staff reviewed the application and recommended approval with conditions. [Exhibit No. 35]. The report states that the Master Plan for the Preservation of Agricultural and Rural Open Space (AROS) is silent regarding special exceptions. The staff report notes that MNCPPC Historic Preservation staff have no objection to the application. The staff report also notes that the Applicants submitted a letter to the Maryland Historic Trust, requesting an evaluation of the proposed special exception site for possible historic concerns, and that the Maryland Historic Trust indicated no concerns about the proposed use. [Exhibit No. 27].

10. Janet Brown testified that the Historic Medley District, as an adjoining property owner, received notice of the special exception application. She stated that Perry Kapsch, President of the Historic Medley District contacted her and requested a copy of the application, and that subsequent to supplying her with that information, she spoke with Ms. Kapsch, who stated that the Historic Medley District had had a meeting, and did not object to the monopole. [Ibid, pp. 91-93].

11. At its meeting on September 12, 2002, the Montgomery County Planning Board reviewed the proposal and recommended approval, with conditions. [Exhibit No. 36]. There was an opportunity for public comment at the Planning Board’s meeting.

12. Michael Smith testified regarding the special exception sign, that “The description was for a telecommunications facility which I believe a lot of people thought would be a small building housing some telephone equipment. I don’t think anyone reasonably understood it to mean that there would be a 150 foot tower.” [Transcript, October 9, 2002, p. 31].

13. John Belferman testified that his property at 21600 Beallsville Road is on the Montgomery County Historical Atlas, and that he did not receive notice of the special exception hearing. He asked the Board to postpone the hearing for “...a reasonable period of time, ” and to reconvene, “After people have had the opportunity to fully review this.” [Id., p.71].

14. Mr. Klauber moved that the hearing be continued to allow members of the public additional time to prepare for the hearing. [Id., p. 84]. Mr. Klauber stated

that that he felt proper notice was given in the case, but that a continuance was necessary to ensure effective citizen participation in the process [Id., p. 88] The Board denied the motion for a continuance [Id., p. 90].

15. Tina Brown testified that she did not understand what a telecommunications facility (as noted on the special exception sign) meant. She stated that in the agricultural reserve, "A lot of us work pretty hard to try and keep back any kind of intrusion into the historic viewshed and to preserve the rural character of that area. [Id., p. 142].

16. Glen Percy stated that he finds it "surprising that I haven't noticed the sign in the six months it's been up." He further stated "I'm not faulting anyone." [Id., p. 154].

17. Thomas Davis stated that for a period of two months, the portion of the special exception sign which said "Telecommunication Facility", was not legible. In response to a Board question he stated that the case number and the Board of Appeals telephone were legible. Mr. Davis acknowledged that when he made the applicants were made aware of the illegibility of the sign at the public hearing on September 25, 2002 they corrected it.

## **FINDINGS OF THE BOARD**

### **NOTICE**

*Section 59-A-4.43, Posting of Property, of the Zoning Ordinance provides in pertinent part:*

*(a) Except as provided in section 59-A-4.41(b)(2), within 3 days after the filing of a petition for a special exception or variance, the applicant must erect a sign, furnished by the Board or the Hearing Examiner, on the subject property within 10 feet of the boundary line of each public road which abuts the property and, if no public road abuts the property, then facing in a manner most readily visible to the public. ....*

*(b) The sign must be erected so that the bottom of the sign is at least 2 ½ feet from the ground. The sign must be of such material and color or colors as the Board or Department specifies, with the height and width of not less than 2 and 3 feet, respectively, and must contain in conspicuous lettering not less than 4 inches in height, the telephone number of the Board and the words:*

**SPECIAL EXCEPTION PENDING FOR**

**(1)**

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BOARD OF APPEALS HEARING CASE NO.  
(2)

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*The blank no. (1) must be filled in with the specific request for either a special exception or variance as specified in the application. The blank no. (2) must be filled in by the assigned case number. ...At the hearing it is the duty of the applicant to certify by affidavit that the provisions of this section have been complied with and the sign or other posting has been continuously maintained up to the time of the hearing.*

The Board finds that the requirements of 59-A-4.43 Posting of Property, have been fulfilled in this case. The description on the special exception sign, "Telecommunication Facility" is the same description used for all special exception applications under Section 59-G-2.43, many of which include monopoles. The Board is not persuaded by testimony that the terminology on the sign was unclear.

With respect to the testimony as to a period of illegibility of the use description on the special exception sign, the Board finds that there has been substantial compliance with the requirement for continuous posting of the property. There is conflicting testimony regarding a period of illegibility. According to all the testimony, the Case Number for the application and the Board of Appeals' phone number have been legible on the sign at all times. The application was filed on March 29, 2002. The sign was posted within 72 hours of that date. Section 59-A-4.41(b)(1) of the Zoning Ordinance requires: "The hearing in the case of any petition for grant of special exception must be held not sooner than 60 days following the mailing of the notice of the filing of the petition..." Thus the Ordinance contemplates a minimum of 60 days notice to the public of a hearing on a special exception. Notice of the instant case began with the posting of the sign not later than April 1, 2002. Assuming that there was a period of illegibility beginning on July 15, 2002, the sign was posted and legible from April 1, 2002 through July 15, 2002, a period of 75 days. Then, according to testimony, the legibility of the sign was corrected shortly after September 25, 2002, and has remained so to date.

In addition the Board notes that the hearing was continued, from its originally scheduled date: September 25, 2002, until October 9, 2002, during which time the Applicants sent a letter to the Commissioners of Barnesville to notify them of the pending application. And, members of the community had the opportunity to participate both in the Tower Committee meeting on the application and the Planning Board's meeting.

GENERAL CONDITIONS (Section 59-G-1.2.1)

The proposed special exception meets the general conditions set forth in Section 59-G-1.2.1 and 59-G-1.21, specifically:

Section 59-G-1.2.1 sets forth the standards which the Board must use to evaluate a special exception. That standard requires that a special exception be evaluated based on its inherent and non-inherent adverse effects at the particular location proposed, irrespective of adverse effect if elsewhere established in the zone. Section 59-G-1.2.1 states:

**Sec. 59-G-1.2. Conditions for Granting**

**59-G-1.2.1. Standard for evaluation.** *A special exception must not be granted absent the findings required by this Article. In making these findings, the Board of Appeals, Hearing Examiner, or District Council, as the case may be, must consider the inherent and non-inherent adverse effects of the use on nearby properties and the general neighborhood at the proposed location, irrespective of adverse effects the use might have if established elsewhere in the zone. Inherent adverse effects are the physical and operational characteristics necessarily associated with the particular use, regardless of its physical size or scale of operations. Inherent adverse effects alone are not a sufficient basis for denial of a special exception. Non-inherent adverse effects are physical and operational characteristics not necessarily associated with the particular use, or adverse effects created by unusual characteristics of the site. Non-inherent adverse effects, alone or in conjunction with the inherent effects, are a sufficient basis to deny a special exception.*

The Board interprets this section to require the following analysis. The Board must:

- (1) Make a determination as to the general neighborhood affected by the proposed use.
- (2) Establish those inherent, generic physical and operational characteristics arising from the given use, in this case any telecommunications facility, to create an evaluation standard. This evaluation standard does not include the actual physical size and scale of operation of the use proposed.
- (3) Determine separately the physical and operational characteristics of the particular use proposed, in this case the telecommunications facility as proposed by the Applicant.

- (4) Compare the generic characteristics of the evaluation standard with the particular characteristics of the use proposed. Inherent adverse effects are those characteristics of the proposed use consistent with the characteristics of the evaluation standard. Non-inherent adverse effects are those characteristics found in the use proposed that are not found in the evaluation standard.

Applying the above analysis to this case, the Board finds as follows:

- (1) The General Neighborhood

The Board finds that the general neighborhood affected by the proposed use consists of the area intended to be served by the proposed telecommunication facility, along Beallsville Road, Barnesville Road, the Barnesville train station and surrounding areas.

- (2) Evaluation Standard - Physical and Operational Characteristics

The Board recognizes and adopts the Planning Board staff's recommendation in previous cases of seven criteria staff uses to establish the physical and operational characteristics of a use. Those are size, scale, scope, lighting, noise, traffic, and the environment. The Board finds that the primary physical characteristic necessarily associated with a telecommunications facility is such a facility's height ranging up to as much as 150 feet. These facilities tend to be visually obtrusive given the difficulty in mitigating the impact of the structure required to hold antennae required for operational use. The Board finds that there are minimal noise, traffic, and environmental issues relating to such facilities although they are accompanied by equipment buildings and related evergreen or other screening to mitigate the impact at ground level. There are generally no lighting impacts associated with this type of use.

- (3) Proposed Use - Physical and Operational Characteristics

The Board finds that height and visual impact are the only potential adverse effects associated with the proposed use, and that both of these effects are inherent to the use. The location of the proposed facility on the site will mitigate its visual impact.: it will be set back approximately 550 feet from Beallsville Road, and approximately 390 feet from the nearest adjacent property line. The portion of the property to be used is heavily forested with 80 – 100 foot trees. The equipment cabinets will also be screened by the existing trees. There should be no environmental impact, no issues relating to noise, and no lighting is proposed. Any traffic will be occasional routine maintenance visits once or twice per month, and any activity will generally be restricted to the building rooftop and interior.

- (4) Comparison of Characteristics

After considering the generic characteristics of a telecommunications facility, and comparing them with the proposed physical and operational characteristics of the applicant's use, the Board finds that all of the physical and operational characteristics of the proposed use will be inherent adverse effects.

*59-G-1.21. General Conditions.*

*(a) A special exception may be granted when the Board, the Hearing Examiner, or the District Council, as the case may be, finds from a preponderance of the evidence of record that the proposed use:*

*(1) Is a permissible special exception in the zone.*

Section 59-C-9.3 allows telecommunication facilities by special exception in the RDT zone.

*(2) Complies with the standards and requirements set forth for the use in Division 59-G-2. The fact that a proposed use complies with all specific standards and requirements to grant a special exception does not create a presumption that the use is compatible with nearby properties and, in itself, is not sufficient to require a special exception to be granted.*

As detailed below, the Board finds that the use so complies.

*(3) Will be consistent with the general plan for the physical development of the District, including any master plan adopted by the commission. Any decision to grant or deny special exception must be consistent with any recommendation in an approved and adopted master plan regarding the appropriateness of a special exception at a particular location. If the Planning Board or the Board's technical staff in its report on a special exception concludes that granting a particular special exception at a particular location would be inconsistent with the land use objectives of the applicable master plan, a decision to grant the special exception must include specific findings as to master plan consistency.*

The Master Plan for the Preservation of Agricultural and Rural Open Space is silent regarding special exceptions, and the use is permitted by special exception in the RDT zone, therefore the Board finds no inconsistency with the Master Plan.

*(4) Will be in harmony with the general character of the neighborhood considering population density, design, scale and bulk of any*



*proposed new structures, intensity and character of activity, traffic and parking conditions, and number of similar uses.*

The area where the facility will be located is not densely populated, and the use is passive and will generate very little activity. In addition, the setbacks from adjoining properties are substantial and the existing forest will provide significant buffering

- (5) *Will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.*

The use will have little impact on the surrounding area other than its visual impact. As detailed above, it will be well set back from surrounding properties, screened by existing forest, and meets all safety standards pertaining to structure and emissions.

- (6) *Will cause no objectionable noise, vibrations, fumes, odors, dust, illumination, glare or physical activity at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.*

The use will not cause noise, vibrations, fumes, odors, dust or illumination. Physical activity will be minimal, as the site is unmanned.

- (7) *Will not, when evaluated in conjunction with existing and approved special exceptions in any neighboring one-family residential area, increase the number, intensity, or scope of special exception uses sufficiently to affect the area adversely or alter the predominantly residential nature of the area. Special exception uses that are consistent with the recommendation of a master or sector plan do not alter the nature of an area.*

There are no other special exceptions in the vicinity.

- (8) *Will not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.*

As detailed above, the requested facility meets all safety standards pertaining to structure and emissions. In addition, it will be well set back from surrounding properties, and screened by existing forest.

(9) *Will be served by adequate public services and facilities including schools, police and fire protection, water, sanitary sewer public roads, storm drainage and other public facilities.*

(i) *If the special exception use requires approval of a preliminary plan of subdivision, the adequacy of public facilities must be determined by the Planning Board at the time of subdivision review. In that case, subdivision approval must be included as a condition of the special exception.*

Not applicable.

(ii) *With regard to findings relating to public roads, the Board, the Hearing Examiner, or the District Council, as the case may be, must further determine that the proposal will have no detrimental effect on the safety of vehicular or pedestrian traffic.*

Not applicable.

(b) *Nothing in this Article relieves an applicant from complying with all requirements to obtain a building permit or any other authorization or approval required by law, nor does the Board's finding of facts regarding public facilities bind any other governmental agency or department responsible for making a determination relevant to the authorization, approval or licensing of the project.*

The applicants' statement of justification states that they will obtain all necessary licenses and permits.

(c) *The applicant for a special exception has the burden of proof to show that the proposed use satisfies all applicable general and specific standards under this Article. This burden includes the burden of going forward with the evidence, and the burden of persuasion on all questions of fact.*

In granting the special exception, the Board finds that the applicants have met the required burden of proof.

#### SPECIFIC CONDITIONS (Sec. 59-G-2.43)

(a) *A public utility building or public utility structure, not otherwise permitted, may be allowed by special exception. The findings of this subsection (a) do not apply to electric power transmission or distribution lines carrying in*

*excess of 69,000 volts. For other buildings or structures regulated by this section, the Board must make the following findings:*

- (1) The proposed building or structure at the location selected is necessary for public convenience and service.*

The Board adopts the Tower Committee's finding that additional telecommunications service is necessary for the public convenience, and that the proposed location is appropriate.

- (2) The proposed building or structure at the location selected will not endanger the health and safety of workers and residents in the community and will not substantially impair or prove detrimental to neighboring properties.*

The Board finds that the requested facility will have none of these effects, and accepts Petitioners' assertions as to its compliance with applicable safety and technical standards. [Exhibit No. 5].

- (b) A public utility building allowed in any residential zone, must, whenever practicable, have the exterior appearance of residential buildings and must have suitable landscaping, screen planting and fencing, wherever deemed necessary by the Board.*

The compound will be screened by existing 80 – 100 foot trees.

- (c) The Board may approve a public utility building and public utility structure exceeding the height limits of the applicable zone if, in the opinion of the Board, adjacent residential developments and uses will not be adversely affected by the proposed use.*

Not applicable.

- (d) Any proposed broadcasting tower must have a setback of one foot from all property lines for every foot of height of the tower; provided, that any broadcasting tower lawfully existing on September 1, 1970, is exempt from the setback limitations imposed by this subsection, and may be continued, structurally altered, reconstructed or enlarged; provided further that any structural change, repair, addition, alteration or reconstruction must not result in increasing the height of such tower above the then existing structurally designed height.*

The monopole will be 390 feet from the nearest adjacent property line and 390 feet from the nearest off-site residence.

- (e) Examples of public utility buildings and structures for which special exceptions are required under this section are buildings and structures for*

*the occupancy, use, support or housing of switching equipment, regulators, stationary transformers and other such devices for supplying electrical service; telephone offices, railroad, bus, trolley, air and boat passenger stations; radio or television transmitter towers and stations; telecommunication facilities; above ground pipelines. Additional standards for telecommunication facilities are found in subsection (j).*

The instant application is for a special exception for a telecommunication facility.

- (f) *The provisions of Section 59-G-1.21(a) shall not apply to this subsection. In any residential zone, overhead electrical power and energy transmission and distribution lines carrying in excess of 69,000 volts, where the board finds;*

Not applicable.

- (g) *In addition to the authority granted by Section 59-G-1.22, the Board may attach to any grant of a special exception under this section other conditions that it may deem necessary to protect the public health, safety, or general welfare.*

The Board grants the special exception based on conditions enumerated below.

- (h) *Petitions for special exception under this section may be filed on project basis.*

Not applicable.

- (i) *A petitioner under this section is considered an interested person for purposes of filing a request for a special exception if the petitioner states in writing under oath that a bona fide effort has been made to obtain a contractual interest in the subject property for a valid consideration without success, and that there is an intent to continue negotiations to obtain the required interest or in the alternative to file condemnation proceedings should the special exception be granted.*

Not applicable.

- (j) *Any telecommunication facility must satisfy the following standards:*

- (1) *The minimum parcel or lot area must be sufficient to accommodate the location requirements for the support structure under paragraph (2), excluding the antenna(s), but not less than the lot area required in the zone. The location requirement is measured from the base*

*of the support structure to the property line. The Board of Appeals may reduce the location requirement to not less than the building setback of the applicable zone if the applicant requests a reduction and evidence indicates that a support structure can be located on the property in a less visually obtrusive location after considering the height of the structure, topography, existing vegetation, adjoining and nearby residential properties, if any, and visibility from the street.*

The subject property consists of 25.05 acres in the RDT zone, which requires a minimum net lot area of 40,000 square feet. The property owners and Sprint are co-applicants for the special exception. The proposed 150' monopole is set back as follows:

Front setback:	550 feet
Rear setback:	475 feet
Side setback:	502 feet
Side setback:	390 feet

Thus, all setbacks for the proposed monopole exceed the 150' required by paragraph (2) below.

(2) *A support structure must be located as follows:*

a. *In agricultural and residential zones, a distance of one foot from property line for every foot of height of the support structure.*

The proposed 150' monopole is set back as follows:

Front setback:	550 feet
Rear setback:	475 feet
Side setback:	502 feet
Side setback:	390 feet

Thus, all setbacks for the proposed monopole exceed the 150' required by paragraph (2) below.

- b. *In commercial and industrial zones, a distance of one-half foot from property line for every foot of height of the support structure from a property line separating the subject site from commercial or industrial zoned properties, and one foot for every foot of height of the support structure from residential or agricultural zoned properties.*

Not applicable.

- c. *These location requirements apply to perimeter lot lines and not to interior lot lines.*

Not applicable.

- (3) *A freestanding support structure must be constructed to hold no less than 3 telecommunication carriers. The Board may approve a support structure holding less than 3 telecommunication carriers if: 1) requested by the applicant and a determination is made that collocation at the site is not essential to the public interest; and 2) the Board decides that construction of a lower support structure with fewer telecommunication carriers will promote community compatibility. The equipment compound must have sufficient area to accommodate equipment sheds or cabinets associated with the telecommunication facility for all the carriers.*

The proposed monopole will be constructed to hold at least three carriers. [Exhibit 5].

- (4) *No signs or illumination are permitted on the antennas or support structure unless required by the Federal Communications Commission, the Federal Aviation Administration, or the County.*

No signs or illumination are requested.

- (5) *Every freestanding support structure must be removed at the cost of the applicant when the telecommunication facility is no longer in use by any telecommunication carrier.*

The applicants have stated that they will remove the monopole when the telecommunication facility is no longer in use. [Exhibit No. 5].

- (6) *Prior to the Board granting any special exception for a telecommunication facility, the proposed facility must be reviewed by the County Telecommunication Transmission Facility Coordinating Group. The Board and Planning Board must make a separate, independent finding as to need and location of the facility.*

The Telecommunication Transmission Facility Coordinating Group (Tower Committee) reviewed the application and recommends its approval at the height and location proposed. The Planning Board also recommends approval of the requested facility at the location proposed. The Board of Appeals adopts the Tower Committee's analysis regarding the absence of other location opportunities for the proposed facility. The Board finds, based upon the Tower Committee's technical analysis of the radio frequency propagation data, that the applicants have demonstrated a need for the facility at the requested height and location.

Therefore, based upon the foregoing, the Board grants the special exception subject to the following conditions:

1. Petitioners shall be bound by their testimony and exhibits of record, the testimony of their witnesses and representations of their attorneys, to the extent that such evidence and representations are identified in the Board's opinion granting the special exception.
2. The monopole must be removed at the cost of the applicant when the telecommunication facility is no longer in use by any telecommunication carrier.
3. Approval of a Tree Protection Plan by the Environmental Planning staff prior to release of sediment and erosion control or building per it as appropriate. An MNCPPC inspector must be contacted for pre-construction inspection of tree protection measure and authorization to begin any tree clearing.

On a motion by Angelo M. Caputo, seconded by Louise L. Mayer, with Allison Ishihara Fultz and Donna L. Barron, Vice Chairman in agreement, and Donald H. Spence, Jr., Chairman necessarily absent:

**BE IT RESOLVED** by the Board of Appeals for Montgomery County, Maryland that the opinion stated above is adopted as the Resolution required by law as its decision on the above entitled case.

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Donna L. Barron  
Vice Chairman, Montgomery County Board of

Appeals

Entered in the Opinion Book  
of the Board of Appeals for  
Montgomery County, Maryland  
this 21<sup>st</sup> day of November, 2002.

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Katherine Freeman  
Executive Secretary to the Board

**NOTE:**

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date the Opinion is mailed and entered in the Opinion Book (See Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County, in accordance with the Maryland Rules of Procedure.



